IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.807/1994
(Prem Singh Vs. State of Raj. & Ors.)

Date of Judgment : 01.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. D.K. Parihar, for the petitioner.
Mr. Narender Moolchandani, Dy. Govt. Advocate.

By way of filing the present writ petition, the petitioner is challenging the validity of order dated 7.1.1994 (Annexure-4) whereby the Addl. Chief Engineer, P.W.D., Jodhpur, Zone Jodhpur has cancelled the order dated 23.12.1993 passed by Superintending Engineer, PW.D. Mech. Circle Jodhpur whereby the petitioner who was working on the post of Helper Gr.II was accorded promotion to the post of Mechanic Gr.II on adhoc basis for a period of six months or till D.P.C. meets whichever is earlier.

Learned counsel for the petitioner argued that the petitioner was working on the post of Helper Gr.II under the Assistant Engineer (Mechanic) P.W.D.

Sub-Division-II and was having experience of nine years for maintenance, repairs of vehicles, road rollers and over-handling of vehicles independently. The petitioner made a representation for promotion to the post of Mechanic Gr.II. Upon the representation filed by the petitioner, the Superintending Engineer passed an order for grant of adhoc promotion to the petitioner on the post of Mechanic Gr.II because he was fulfilling the eligibility criteria for the said post and was entitled to be promoted on the said post.

According to the petitioner he joined on the said post of Mechanic Gr.II on 23.12.93 in the Office of Assistant Engineer P.W.D. Mechanical Sub-Division II (S & I) Jodhpur vide joining report Annexure-2. However, unfortunately without providing opportunity of hearing, an order dated 7.1.94 was issued by the Additional Chief Engineer, P.W.D. Jodhpur whereby the order dated 23.12.93 granting promotion to the petitioner on adhoc basis was cancelled. It is further stated in the writ petition that the respondent No.2 gave directions for cancellation of order on telephone. The petitioner has placed on record the typed copy of the order impugned order dated 7.1.1994. It is argued by the learned counsel for the petitioner that the respondent No.2 has no authority to cancel the order of promotion so also the order impugned is non-speaking order and has been passed without affording opportunity of hearing to the

petitioner. Therefore, the order impugned is against the principles of natural justice. Learned counsel for the petitioner argued that there is a provision for promotion from the post of Helper to the post of Mechanic in Work-Charge Rules and the respondents were under an obligation to consider the candidature of the petitioner for promotion to the post of Mechanic as per the eligibility on the post of Helper in accordance with Work-charge Rules but without holding any meeting of D.P.C. so also without providing any opportunity of hearing to the petitioner, the order dated 23.12.93 which was passed by the Superintending Engineer within his competence, granting promotion to the petitioner was cancelled, which is totally illegal and unconstitutional.

In reply to the writ petition, it is contended by respondents that the petitioner was only promoted on adhoc basis as is evident from the order dated 23.12.1993 itself. Further, it is submitted in the reply that order dated 23.12.93 was rightly cancelled by the respondent No.2 as per the directions issued by the Chief Engineer, P.W.D., Jodhpur. In reply to ground-(b), it is stated by the respondents that the order dated 7.1.1994 is self speaking order. Thus, the Chief Engineer, P.W.D. has rightly cancelled the order of promotion because at the relevant time there was ban imposed by the Government on the adhoc appointment/promotion.

From perusal of the order impugned, it is clear that the Additional Chief Engineer has nowhere stated that the reason for cancelling the order dated 23.12.93 is that there is a ban imposed by the Government on adhoc promotion, therefore, obviously the order impugned is non-speaking order so also without providing any opportunity of hearing to the petitioner.

In this case, it is required to be observed that the respondent-Department is not regularly convening the meetings of D.P.C. for low-paid employees of the Government. The low-paid employees of the State are waiting for their promotion for years together. This is totally inaction on the part of the State Government. The State Government is under obligation to follow the rules and regulations, which is framed by the legislature but repeatedly due to inaction on the part of the department for not providing promotion as provided under the Rules, the employees are agitating their matters before the Court of law. It is also true that every employee who is working substantively can claim his right in accordance with the Rules. However, in this case on one hand due to inaction on the part of the respondent-department no promotion is granted to the low-paid employee in the Public Works Department and on the other hand when adhoc promotion is made, it is

cancelled on the ground that there is ban imposed by the State Government. It is strange that at the time of passing order impugned, no notice was given to the petitioner nor any opportunity of hearing was given to the petitioner. This action can be defined as arbitrary action on the part of the respondent-department. Every department of the welfare State is required to convene the meetings of D.P.C. regularly as provided under the relevant Rules. There is no power left with the authorities to shut the doors of the promotional opportunities. Of-course, the State Government has issued an order for selection scale to its employees on completion of 9, 18 and 27 years of service but there is total inaction on the part of the authorities of the State Government that they are not determining the posts every year and not convening meetings of D.P.C. regularly as provided under the relevant Rules. In the present case, it is apparently clear from the facts that the order impugned has been passed by the respondents without providing opportunity of hearing to the petitioner which is totally against the principles of natural justice.

Accordingly, the order impugned dated 7.1.1994 passed by Additional Chief Engineer, P.W.D. Jodhpur, Zone Jodhpur is set aside. The petitioner is entitled to hold the post of Mechanic Grade-II as per terms and conditions of promotion.

With the above directions, the writ petition is allowed.

(GOPAL KRISHAN VYAS), J.

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